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| 10/657,263 | 09/08/2003 | David Franklin Scamard | | 3287 |

7590 08/07/2006
Dr. David F. Scamard, O.D.
18106 Princess Point Circle
Tampa, FL 33647

EXAMINER

TIBBITS, PIA FLORENCE

| ART UNIT | PAPER NUMBER |
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2838

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,263

Applicant(s)

SCAMARD, DAVID FRANKLIN

Examiner

Pia F. Tibbits

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in answer to the communication of 12/21/2005.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "charge circuit portion detects", the "electric device" must be shown or the feature(s) canceled from the claim(s). **No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A (1) states, "the list may not be incorporated into the specification but must

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be submitted in a separate paper." Therefore, unless the examiner on a form PTO-892 has cited the references, they have not been considered.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed: a capacitor used as a power supply for a battery charging circuit.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter: "short period of time", "optimal period of time", "optimal current", "various stages", "electric device", "additional electric current", "transfer additional electric current for the operation of the device". See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction is required.

Applicant is reminded to use consistent language throughout the disclosure in order to facilitate finding support for the recited limitations, as well as to provide proper antecedence for all claimed limitations. For example, the specification describes a "chargeable battery portion", while claim 1 recites a "battery portion".

Claim Objections

Claim 1 is objected to because of the following informalities:

in line 3, "the battery portion" lacks antecedence.

in line 7, "a chargeable battery portion" is not clear since "battery portion" has already been recited in line 3.

in line 7, "any chargeable/rechargeable battery" is not clear since only a rechargeable battery could be charged. Applicant to explain the meaning of "chargeable battery".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility, one skilled in the art clearly would not know how to use the claimed invention.

As to claim 1, Applicant claims a charger in which a capacitor charges a battery without any external power to the system as a whole. This system would be inoperative without additional power to overcome the power conversion loss. If the boundary considered includes the universe, the principle of the conservation of energy amounts to a statement that the sum total of the energy of the universe is a fixed unalterable quantity. The principle of the conservation of energy also denies the possibility of "perpetual motion." By "perpetual motion" is meant the devising of some arrangement so that energy in one form can be produced without energy in some other form being used up by the machine.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Small et al.**

[hereinafter Small][6326767].

For examination purposes, the application was considered to address as **intended limitations** a power supply including a capacitor(s) charging a rechargeable battery, such as a NiCad battery, via a regulator, and monitoring a condition of the battery to optimize charging.

Small discloses in figures 1-8 a power supply 501 [see fig.5A] including capacitors C₁-C₄ [see column 18, line 49] charging a rechargeable battery, such as a NiCad battery [see column 2, line 7; column 18, line 21] via regulator 512 [see column 19, line 23]. The battery charger 300 has a temperature sensor at a negative charging terminal for determining the charge condition of a

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rechargeable battery pack and controlling a charging current. The battery charger has a microcontroller to control the charging of the rechargeable battery pack using a fast charge current or a trickle charge current [see the abstract].

With regard to the patent using a power supply 501 including a regulated and unregulated output, cited in the Small reference, by eliminating one output the applicant neither extends the life of the batteries being charged, nor makes it easier to fully charge a battery, which is the object of his invention, as cited in the disclosure. Therefore it would be obvious to one skilled in the art at the time the invention was made that the elimination of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before. See *Ex parte Wu*, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989), *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

Response to Arguments

Applicant's arguments filed on 12/21/2005 have been fully considered but they are not persuasive.

In response to Applicant's argument that the Small reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies, a "disconnected" capacitor, would create an inoperative system, i.e., a system without additional power to overcome the power conversion loss.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related apparatus: **Okamura et al.** [5604426] discloses an auxiliary power supply for a vehicle provided with an electric double layer capacitor having a large capacitance. The auxiliary power supply is so adapted that an output power of regenerative braking at the time of braking of the vehicle is stored in the capacitor through a rectifier, and a secondary battery is charged with energy stored in the capacitor as required. **JP-2002238108**, **JP-2000253508**, **JP-2000253503**, **JP-2003206838**, and **JP-10309002** all disclose electrical double-layer capacitors charging a rechargeable battery.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Pia Tibbits whose telephone number is 571-272-2086. If unavailable, contact the Supervisory Patent Examiner Karl Easthom whose telephone number is 571-272-1989. The Technology Center Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Helpful Information for Pro Se Applicants

The following includes general information for the applicant's benefit.

Applicant's Response

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Unless the Office explicitly requests the return of a paper, all papers mailed to the Applicant are intended to be kept by the applicant for his or her own records.

ALL applicants must sign the response.

All responses must be submitted typewritten, at least 1½ spaced (preferably double-spaced) and on a single side of the paper.

Papers filed in an application should not be filed in duplicate (or triplicate) unless specifically requested.

A single copy is sufficient.

Amendments to the Specification

Any amendments to the specification must be presented as a list of additions and deletions, referring to the passages in question by page and line numbers. No new matter may be entered. It is not necessary to submit a new specification unless the Examiner has required one. As an example, an amendment to the specification should appear as follows:

On page 16, line 12, change "effect" to --affect--.

On page 23, line 4, insert --fastener-- after "loop".

(Note: the inserted language is placed between double dashes.)

Amendments to the Claims

Short amendments to the claims should be presented in the above format using claim number and the line number within the claim. However, if an amendment to a claim requires the addition of more than five words, the claim must be completely rewritten with the additions to the claim being underlined. Any deletions from the claims should be enclosed in brackets. No matter may be inserted into the claims that was not in the originally filed disclosure.

As an example, if a claim for a chair were originally written as follows:

1. A chair comprising a horizontal seat, a vertical back, and a plurality of vertical support members.

An amended version of this claim might then be written as follows:

1. (Amended) A chair comprising a horizontal seat, a vertical back, and [a plurality of] four vertical [support members] legs attached to said seat.

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In this example, the words "a plurality of" and "support members" have been deleted from the claim. The words --four-- and --legs attached to said seat-- have been inserted. If the specification or drawings originally described the inclusion of four legs on the chair, the new limitation of "four legs" in the claim would not constitute new matter.

Arguments

If an Office action contains a rejection or objection to the claims, the applicant MUST respond with changes or arguments. Arguments should be in a section under the heading "Remarks" pointing out disagreements with the examiner's contentions. The applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or patentably distinguish from them. The applicant must respond to every ground of rejection and objection set forth in the Office action. For more details of the amendment process, the applicant can refer to 37 Code of Federal Regulations Sections 1.118 - 1.121.

New Matter

As previously mentioned, no amendment to the specification, claims, or drawings may introduce new matter. "New matter" constitutes any material, which meets the following criteria:

1. It is added to the disclosure (either the specification, the claims, or the drawings) after the filing date of the application, and
2. It contains new information, which is neither included nor implied in the original version of the disclosure.

This includes the addition of physical properties, new uses, etc.

Period for Response

The three month shortened statutory period specified in the cover letter (form PTO-326) is the period of time in which the applicant has to respond to every rejection and objection within this Office action.

Applicant's response must be received within three months of the date listed on the cover letter, or the application will be held abandoned. This period, however, may be extended up to a maximum of six

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months, with the payment of the appropriate fee. The response must also contain a statement requesting "an extension of the period for response under 37 CFR 1.136(a)".

PFT

Pia Tibbits

July 30, 2006

Primary Patent Examiner

